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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,761	07/17/2003	Jean-Louis Gueret	124371	9154
92793	7590	02/19/2010	EXAMINER	
Oliff & Berridge, PLC P.O. Box 320850 Alexandria, VA 22320-4850				STEITZ, RACHEL RUNNING
ART UNIT		PAPER NUMBER		
3732				
NOTIFICATION DATE			DELIVERY MODE	
02/19/2010			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

OfficeAction92793@oliff.com  
jarmstrong@oliff.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/620,761	GUERET, JEAN-LOUIS	
	<b>Examiner</b>	<b>Art Unit</b>	
	RACHEL R. STEITZ	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 January 2010.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 85-100 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 85-100 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/22/2010 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 85-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyo (JP 63-17031) in view of Gueret (CN1270786A).  
Kogyo discloses a device comprising at least two containers (2,2A) configured to be superposable on a stacking axis. One container (2) is configured as a lid with a hinge (9) with the container added thereto. Each container defines a housing. The device further comprises a lid (3) and an applicator member (5c) is secured in one of the housings (see figure 1). The containers pivot about one another about an axis not

parallel to the stacking axis and each container except for a bottom container along the stacking axis comprises a bottom wall (see Figure 23). There are at least two hinges (9). The hinges are angularly offset. One of the housings contains cosmetic, and each housing contains only one product (i.e. eyeshadow, or blush). Though only two containers are shown, Kogyo discloses that more containers can be added as desired. Regarding the limitation of the axis of rotation of the hinges not being parallel, it is noted that in figure 1, the axis of rotation of the hinges are perpendicular and in figures 21-23 they are angularly offset so as not to be parallel. Kogyo discloses the bottom wall having a hole to receive a lip extending upward from the container below it configured to cooperatively overlap with an inside surface of the container over it (see Figures 19 and 20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the lip be extending downward from the bottom wall instead up upward from the top wall, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 UPSQ 70. Further, Kogyo does not disclose a receptacle body containing a substance with an applicator member secured to the receptacle body during application of the substance, with a closure cap that is configured to be removably fixed to the receptacle body wherein the receptacle body is of a different shape than the containers.

Gueret discloses forming the bottom of a container (11) such that it may be used as a closure cap for a different receptacle (111) wherein the receptacle body contains a substance (P1) and has an applicator member (20) secured to the receptacle body during the application of the substance with the applicator member and the receptacle

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(111) body is of a different shape than the container (11) (see Figures 2A and 2B). It would have been obvious to one skilled in the art to make the bottom of the lowest container of Kogyo such that it may form a closure cap to another receptacle and fit it to such receptacle in view of Gueret in order to provide the device with a means for containing a different type cosmetic (e.g. different colored powders).

***Response to Arguments***

4. Applicant's arguments filed January 22, 2010 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL R. STEITZ whose telephone number is (571)272-1917. The examiner can normally be reached on Monday-Friday 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rachel Running Steitz/  
Examiner  
Art Unit 3732